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EXAMINER	
LE, LANA N	

ART UNIT	PAPER NUMBER
2685	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/801,494	WATLER ET AL.	
	Examiner	Art Unit	
	Lana N. Le	2685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1, 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Korpela (US 6,311,054).

Regarding claim 1, Korpela et al discloses a system for determining a charge in connection with a data communication session, comprising:

a wireless device 18 capable of communicating with a network 22 via a router 19(fig. 4);

a data rating application configured to use a metering method to meter the data communication session (col 5, lines 61-62);

a rating method to be used in conjunction with the metering method to determine the charge in connection with the data communication session (col 2, lines 25-34; col 5, lines 44-55).

Regarding claims 3, Korpela et al further discloses the system according to claims 1 and 25 respectively, wherein the wireless device is a mobile phone 18, a computer, a television, an appliance or a telephone.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 4, 6-7, 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al in view of Mueller et al (US 6,185,413).

Regarding claim 4, Korpela et al further discloses the system according to claim 1 wherein Korpela didn't further discloses the metering method is selected from a plurality of metering methods. Mueller et al further discloses the metering method is selected from a plurality of metering methods (col 9, lines 30-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to select from a plurality of metering methods in order to determine the most proper and cheapest alternative for the transmission connection.

Regarding claim 6, Korpela et al discloses the system according to claim 1, wherein Korpela et al didn't further discloses the data rating application is configured to cooperate with an accounting application to update an account relating to the wireless

device. Mueller et al further discloses the data rating application is configured to cooperate with an accounting application to update an account relating to the wireless device (col 27, lines 24-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to cooperate with an accounting application in order to deplete the amount used from the user's account.

Regarding claim 7, Mueller et al further discloses the system according to claim 6, wherein the accounting application resides in the wireless device (col 10, lines 22-29).

Regarding claim 21, Mueller et al further discloses the system according to claim 4 wherein the plurality of metering methods include a metering by connection method; and

wherein the metering by connection method determines the charge in connection with the data communication session based on a connection for the data communication session being established (col 9, lines 30-35).

Regarding claim 22, Mueller et al further the system according to claim 4 wherein the plurality of metering methods include a metering by time method; and wherein the metering by time method determines the charge in connection with the data communication session based on duration of the data communication session (col 3, lines 33-34).

Regarding claim 23, Korpela et al further discloses the system according to claim 4 wherein the plurality of metering methods include a metering by volume method; and wherein the metering by volume method determines the charge in connection with the

data communication session based on volume of data transmitted and/or received by the wireless device during the data communication session (col 3, line 63 – col 4, line 6).

Regarding claim 24, Korpela et al further discloses the system according to claim 23, wherein the metering by volume method further includes metering on a per kilobyte basis, metering on a per packet basis or metering on a predetermined denomination basis (col 3, line 19–33).

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al (US 6,311,054) in view of Mueller et al and further in view of Block et al (US 5,960,416).

Regarding claim 8, Korpela and Mueller et al further disclose the system according to claim 6 wherein Korpela et al and Mueller et al didn't further disclose wherein the accounting application resides at a location external to the wireless device. Block et al further discloses the system according to claims 6 wherein the accounting application resides at a location external to the wireless device (col 6, lines 9-11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the flexibility of storing the accounting data in another area that is in conjunction with sending data on its way to the destination device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to store the accounting information elsewhere such as a SIM or the router devices in order to collect the accounting information when it is needed even if it is not located inherently inside the phone.

6. Claims 5, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al (US 6,311,054) in view of Wright et al (US 5,923,741).

Regarding claim 5, Korpela discloses the system according to claim 1 wherein Korpela didn't further discloses the rating method is selected from a plurality of rating methods applicable to the particular application. Wright et al discloses the rating method is selected from a plurality of rating methods applicable to the particular application (col 4, lines 50-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the rating method in order to determine the best rate for data transfer based on data value for the particular connection.

Regarding claim 18, Korpela et al further discloses the system according to claim 5 wherein the data rating application is configured to select one of the plurality of rating method based on service level selected for the data communication session (col 2, lines 59-64; col 5, lines 44-51).

Regarding claim 19, Korpela et al further discloses the system according to claim 18 wherein the service level selected relates to speed and/or accuracy of data transmission during the data communication session (col 3, lines 63 – col 4, line 6).

7. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al (US 6,311,054) in view of Wright et al (US 5,923,741) and further in view of Reeder et al (US 6,141,652).

Regarding claim 15, Korpela and Wright et al further discloses the system according to claim 5 wherein Korpela and Wright et al didn't further discloses the data rating application is configured to select one of the plurality of rating methods based on

source of data received by the wireless device during the data communication session. Reeder et al didn't specifically discloses the data rating application is configured to select one of the plurality of rating methods based on source of data received by the wireless device during the data communication session. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the charging rate incurred for the user based on the source of the web link of Reeder in which data was downloaded from.

Regarding claim 16, Wright et al further discloses the data rating application is configured to select one of the plurality of rating methods based on type of data (data type of fig. 3b) received by the wireless device during the data communication session.

Regarding claim 17, Wright et al further discloses the system according to claim 16 wherein the rating method selected is determined by the value of a data field in the data received (data value of fig. 3b).

8. Claims 12, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al (US 6,311,054) in view of Wright et al (US 5,923,741) and further in view of Mueller et al (US 6,185,413).

Regarding claim 12, Korpela et al and Wright et al discloses the system according to claim 5, wherein Korpela et al and Wright et al didn't further disclose the wireless device includes a plurality of additional applications residing therein; and

wherein the data rating application is configured to select one of the plurality of rating methods based on which one of the plurality of additional applications residing in the wireless device will be using data received by the wireless device during the data

communication session. Mueller et al further discloses the wireless device includes a plurality of additional applications residing therein; and

wherein the data rating application is configured to select one of the plurality of rating methods based on which one of the plurality of additional applications residing in the wireless device will be using data received by the wireless device during the data communication session (col 7, lines 64 – col 8, line 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have many applications in order to determine the charge rate that's applicable to the particular application.

Regarding claim 20, Mueller et al further discloses the system according to claim 18 wherein the service level is selected by a user during a subscription process or via a user interface (col 11, lines 24-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the user to select the service he/she would rather use other than the automatic selection by the program.

9. Claims 9, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al in view of Peschel et al (US 6,385,444).

Regarding claim 9, Korpela the system according to claim 1 wherein Korpela didn't further disclose the data rating application is configured to select the rating method and the metering method upon detecting a set-up event which takes place during the course of setting up the data communication session; and wherein the set-up event is originated by either the network or the wireless device to indicate that the data communication session is to begin. Peschel et al further discloses wherein the data

rating application is configured to select the rating method and the metering method upon detecting a set-up event which takes place during the course of setting up the data communication session; and wherein the set-up event is originated by either the network or the wireless device to indicate that the data communication session is to begin (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the call rating and metering method to determine the charging rate based on the set-up of the start/end of a communication connection.

Regarding claim 10, Korpela further disclose the system according to claims 1 and 25 respectively, wherein Korpela didn't further disclose the data rating application is configured to begin determining the charge in connection with the data communication session using the metering method and the rating method upon detecting a begin event which takes place during the course of the data communication session; and

wherein the begin event is originated by either the network or the wireless device to indicate that the data communication session has begun. Peschel et al further discloses the system according to claims 1 and 25 respectively, wherein the data rating application is configured to begin determining the charge in connection with the data communication session using the metering method and the rating method upon detecting a begin event which takes place during the course of the data communication session; and wherein the begin event is originated by either the network or the wireless device to indicate that the data communication session has begun (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was

made to determine the call rating and metering method to determine the charging rate based on the starting time of a communication connection duration.

Regarding claim 11, Korpela further discloses the system according to claim 1, wherein Korpela didn't further disclose the data rating application is configured to end determining the charge in connection with the data communication session using the metering method and the rating method upon detecting an end event which takes place during the course of the data communication session; and wherein the end event is originated by either the network or the wireless device to indicate that the data communication session has ended.

Peschel et al further discloses the system wherein the data rating application is configured to end determining the charge in connection with the data communication session using the metering method and the rating method upon detecting an end event which takes place during the course of the data communication session; and wherein the end event is originated by either the network or the wireless device to indicate that the data communication session has ended (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the call rating and metering method to determine the charging rate based on the end of the duration of a communication connection.

10. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela (US 6,311,054) in view of Reeder (US 6,141,652).

Regarding claim 13, Korpela further disclose the system according to claims 1 wherein Korpela didn't further disclose the data rating application is configured to use

the rating method based on usage of data received during the data communication session. Reeder further discloses the system wherein the data rating application is configured to use the rating method based on usage of data received during the data communication session (col 10, lines 59-67; col 2, lines 61-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the rating method based on usage of data received during the data communication session in order to measure the amount of data exhausted and apply a fee ie. per megabit used to the user based on how much of the downloaded data is consumed.

Regarding claim 14, Korpela further disclose the system according to claim 13 wherein Korpela didn't further disclose the data received during the data communication session is a downloaded application; and wherein the charge is determined based on occurrence or duration of usage of the downloaded application. Reeder further discloses the system wherein the data received during the data communication session is a downloaded application; and wherein the charge is determined based on occurrence or duration of usage of the downloaded application (col 10, lines 59-67; col 2, lines 61-67).

11. Claims 25, 27-30, 34, 38-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al (US 6,311,054) in view of Mueller et al (US 6,185,413) and further in view of Wright et al (US 5,923,741).

Regarding claim 25, Korpela et al discloses a system for determining a charge in connection with a data communication session, comprising:

a wireless device 18 capable of communicating with a network 22 via a router (fig. 4);

a data rating application configured to meter the data communication session via a metering method (col 5, lines 61-62);

and a rating method to be used in conjunction with the selected metering method to determine the charge in connection with the data communication session (col 2, lines 25-34; col 3, line 63 – col 4, line 6).

Korpela et al didn't further disclose selecting a metering method from a plurality of metering methods. Mueller et al further discloses selecting a metering method from a plurality of metering methods (col 5, line 66 – col 6, line 22; col 7, lines 46-52). Korpela and Mueller et al didn't further disclose selecting a rating method from a plurality of rating methods. Wright further discloses selecting a rating method from a plurality of rating methods (col 4, lines 50-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a metering and rating method in order to find the cheapest and most efficient charge rate for the user.

Regarding claim 27, Korpela et al further discloses the system according to claim 25 wherein the wireless device is a mobile phone 18, a computer, a television an appliance or a telephone.

Regarding claim 28, Mueller et al further discloses the system according to claim 25 wherein the data rating application is configured to cooperate with an accounting application to update an account relating to the wireless device (col 27, lines 24-36).

Regarding claim 29, Mueller et al further discloses the system according to claim 28 wherein the accounting application resides in the wireless device (col 10, lines 22-29).

Regarding claim 30, Mueller et al further discloses the system according to claim 28 wherein the accounting application resides at a location external to the wireless device (col 10, lines 22-29).

Regarding claim 34, Mueller et al further discloses the system according to claim 25 wherein the wireless device includes a plurality of additional applications residing therein; and

wherein the data rating application is configured to select the rating method from the plurality of rating methods based on which one of the plurality of additional applications residing in the wireless device will be using data received by the wireless device during the data communication session (col 7, lines 64- col 8, line 13, lines 38-56).

Regarding claim 38, Wright et al further discloses the system according to claim 25 wherein the data rating application is configured to select one of the plurality of rating methods based on type of data received by the wireless device during the data communication session (data type; fig. 3b).

Regarding claim 39, Wright et al further discloses the system according to claim 38 wherein the rating method selected is determined by the value of a data field in the data received (data value of fig. 3b).

Regarding claim 40, Korpela et al further discloses the system according to claim 25 wherein the data rating application is configured to select the rating method from the plurality of rating methods based on service level selected for the data communication session (col 2, lines 59-64, lines 44-51).

Regarding claim 41, Korpela et al further discloses the system according to claim 40 wherein the service level selected relates to speed and/or accuracy of data transmission during the data communication session (col 3, lines 63- col 4, line 6).

Regarding claim 42, Mueller et al further discloses the system according to claim 40 wherein the service level is selected by a user during a subscription process or via a user interface (col 11, lines 24-30).

Regarding claim 43, Mueller et al further discloses the system according to claim 25 wherein the plurality of metering methods include a metering by connection method; and wherein the metering by connection method determines the charge in connection with the data communication session based on a connection for the data communication session being established (col 9, lines 30-35).

Regarding claim 44, Mueller et al further discloses the system according to claim 25 wherein the plurality of metering methods include a metering by time method; and wherein the metering by time method determines the charge in connection with the data communication session based on duration of the data communication session (col 3, lines 33-34).

Regarding claim 45, Korpela et al the system according to claim 25 wherein the plurality of metering methods include a metering by volume method; and wherein the

metering by volume method determines the charge in connection with the data communication session based on volume of data transmitted and/or received by the wireless device during the data communication session (col 3, line 63 – col 4, line 6).

Regarding claim 46, Korpela et al further discloses the system according to claim 45, wherein the metering by volume method further includes metering on a per kilobyte basis, metering on a per packet basis or metering on a predetermined denomination basis (col 3, line 28-38).

12. Claims 31, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela et al in view Mueller et al in view of Wright et al and further in view of Peschel et al (US 6,385,444).

Regarding claim 31, Korpela, Mueller et al, and Wright et al discloses the system according to claim 25 wherein Korpela and Mueller et al and Wright et al didn't further disclose the data rating application is configured to select the rating method and the metering method upon detecting a set-up event which takes place during the course of setting up the data communication session; and wherein the set-up event is originated by either the network or the wireless device to indicate that the data communication session is to begin. Peschel et al further discloses wherein the data rating application is configured to select the rating method and the metering method upon detecting a set-up event which takes place during the course of setting up the data communication session; and wherein the set-up event is originated by either the network or the wireless device to indicate that the data communication session is to begin (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was

made to determine the call rating and metering method to determine the charging rate based on the set-up of the start/end of a communication connection.

Regarding claim 32, Korpela, Mueller et al, and Wright et al further disclose the system according to claim 25, wherein Korpela, Mueller et al, and Wright et al didn't further disclose the data rating application is configured to begin determining the charge in connection with the data communication session using the metering method and the rating method upon detecting a begin event which takes place during the course of the data communication session; and

wherein the begin event is originated by either the network or the wireless device to indicate that the data communication session has begun. Peschel et al further discloses the system wherein the data rating application is configured to begin determining the charge in connection with the data communication session using the metering method and the rating method upon detecting a begin event which takes place during the course of the data communication session; and wherein the begin event is originated by either the network or the wireless
device to indicate that the data communication session has begun (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the call rating and metering method to determine the charging rate based on the starting time of a communication connection duration.

Regarding claim 33, Korpela, Mueller et al, and Wright et al further discloses the system according to claim 25, wherein Korpela, Mueller et al, and Wright et al didn't further disclose the data rating application is configured to end determining the charge

in connection with the data communication session using the metering method and the rating method upon detecting an end event which takes place during the course of the data communication session; and wherein the end event is originated by either the network or the wireless device to indicate that the data communication session has ended.

Peschel et al further discloses the system wherein the data rating application is configured to end determining the charge in connection with the data communication session using the metering method and the rating method upon detecting an end event which takes place during the course of the data communication session; and wherein the end event is originated by either the network or the wireless device to indicate that the data communication session has ended (col 7, lines 1-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the call rating and metering method to determine the charging rate based on the end of the duration of a communication connection.

13. Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela (US 6,311,054) in view of Mueller et al in view of Wright et al and further in view of Reeder (US 6,141,652).

Regarding claim 35, Korpela, Mueller et al and Wright et al further disclose the system according to claim 25 wherein Korpela, Mueller et al and Wright et al didn't further disclose the data rating application is configured to use the rating method based on usage of data received during the data communication session. Reeder further discloses the system wherein the data rating application is configured to use the rating

method based on usage of data received during the data communication session (col 10, lines 59-67; col 2, lines 61-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the rating method based on usage of data received during the data communication session in order to measure the amount of data exhausted and apply a fee ie. per megabit used to the user based on how much of the downloaded data is consumed.

Regarding claim 36, Korpela, Mueller et al and Wright et al further disclose the system according to claim 35 wherein Korpela, Mueller et al and Wright et al didn't further disclose the data received during the data communication session is a downloaded application; and wherein the charge is determined based on occurrence or duration of usage of the downloaded application. Reeder further discloses the system wherein the data received during the data communication session is a downloaded application; and wherein the charge is determined based on occurrence or duration of usage of the downloaded application (col 10, lines 59-67; col 2, lines 61-67).

Regarding claim 37, Korpela, Mueller et al and Wright et al further discloses the system according to claim 25 wherein Korpela, Mueller et al and Wright et al didn't further discloses the data rating application is configured to select one of the plurality of rating methods based on source of data received by the wireless device during the data communication session. Reeder et al didn't specifically discloses the data rating application is configured to select one of the plurality of rating methods based on source of data received by the wireless device during the data communication session. However, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to determine the charging rate incurred for the user based on the source of the web link of Reeder in which data was downloaded from.

14. Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpela (US 6,311,054) in view of Mueller et al (US6185,413) as applied to claim 25 above and further in view of Reeder (US 6,141,652).

Regarding claim 35, Korpela and Mueller et al further discloses the system according to claim 25 wherein Korpela and Mueller et al didn't further disclose the data rating application is configured to use the rating method based on usage of data received during the data communication session. Reeder further discloses the system wherein the data rating application is configured to use the rating method based on usage of data received during the data communication session (col 10, lines 59-67; col 2, lines 61-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the rating method based on usage of data received during the data communication session in order to measure the amount of data exhausted and apply a fee ie. per megabit used to the user based on how much of the downloaded data is consumed.

Regarding claim 36, Korpela further disclose the system according to claim 35 wherein Korpela didn't further disclose the data received during the data communication session is a downloaded application; and wherein the charge is determined based on occurrence or duration of usage of the downloaded application. Reeder further discloses the system wherein the data received during the data communication session is a downloaded application; and wherein the charge is determined based on

occurrence or duration of usage of the downloaded application (col 10, lines 59-67; col 2, lines 61-67).

Double Patenting

15. Claims 1-2 are rejected under the judicially created doctrine of double patenting over claim 1 of U. S. Patent No. 6,725,031 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

16. Claims 3-24 are rejected under the judicially created doctrine of double patenting over claims 2-23 of U. S. Patent No. since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

17. Claims 25-26 are rejected under the judicially created doctrine of double patenting over claims 24 of U. S. Patent No. since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

18. Claims 27-46 are rejected under the judicially created doctrine of double patenting over claims 25-44 of U. S. Patent No. since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lana Le whose telephone number is (703) 308-5836. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Hunter can be reached on (703) 308-6732. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9315 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4750.

Lana Le

August 20, 2005